

EX PARTE OR LATE FILED

LEVINE, BLASZAK, BLOCK & BOOTHBY, LLP

ORIGINAL

2001 L ST., NW.
SUITE 900
WASHINGTON, D.C. 20036
(202) 857-2550
FAX (202) 223-0833

March 20, 2003

RECEIVED

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

MAR 20 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Review of Regulatory Requirements for Incumbent LEC Broadband
Telecommunications Services and Wireline/Internet Access
Services, CC Docket Nos. 01-337 and 02-33, 95-20, 98-10.

Dear Ms. Dortch:

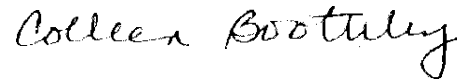
On March 19, 2003, the undersigned and Dr. Lee Selwyn of Economics and Technology, Inc., on behalf of The Ad Hoc Telecommunications Users Committee ("Ad Hoc"), met with Jeffrey Carlisle, Senior Deputy Chief Wireline Competition Bureau; Carol Matthey, Deputy Chief Wireline Competition Bureau; Brent Olson, Deputy Division Chief Competition Policy Division; Cathy Carpino and Terri Natoli, to discuss the proceedings referenced above. The participants discussed the issues raised by Ad Hoc in its written pleadings filed in the referenced dockets. In addition, we discussed the materials attached hereto.

The first attachment summarizes the substance of Ad Hoc's previously-filed pleadings. The meeting participants discussed Tables 3 and 7 in the second attachment which is a declaration filed January 23, 2003, in the public record of the Commission's proceeding in RM No. 10593. The participants discussed the special access profit margin indicated in the **third** attachment which is a "Revenue Profile" produced by Verizon. Finally, the participants discussed the difference in relative size of the MSAs with Phase I and Phase II pricing flexibility under the Commission's rules. The MSAs are listed in the fourth attachment

No. of Copies 047
List A2003

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), copies of this letter and attachments have been filed with the Office of the Secretary.

Sincerely,



Colleen Boothby

Counsel for
Ad Hoc Telecommunications Users
Committee

Attachments

cc: Jeffrey Carlisle
Carol Matthey
Brent Olson
Cathy Carpino
Terri Natoli

- Competition in broadband business markets has yet to develop
 - Member survey confirms little or no competition
 - Cable is not an option for business services
 - The BOCs can and do raise their prices when they get regulatory flexibility
 - BOCs are not competing out of region
- There is no evidence of competition in the record for either docket
 - No party to these proceedings has proffered evidence of competition in this market
 - No party has rebutted Ad Hoc's showing that competition does not exist
- End users need the protection of the Computer II/III rules
 - End users want to control their choice of CPE and ISPs
 - Business end users need the technological innovation and downward pricing pressure of open markets for CPE and information services
- The Commission must also
 - Enforce the non-discrimination, pricing, and tariffing requirements in the Act
 - Revive incentive regulation of ILEC prices for broadband business services
 - Initialize ILEC special access rates at the price cap-regulated levels in place before MSA pricing
 - Initiate and complete an X factor specification before the CALLS plan re-targets the X to GDP-PI in July 2004
 - Continue the ILECs' contract tariff authority so that ILECs and customers can negotiate to respond to competition if it emerges

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

AT&T Corp.

Petition for Rulemaking to Reform
Regulation of Incumbent Local Exchange
Carrier Rates for Interstate Special
Access Services

RM No. 10593

Reply Declaration

of

LEE L. SELWYN

on behalf of

AT&T Corp.

January 23, 2003

TABLE OF CONTENTS

DECLARATION OF LEE L. SELWYN

Introduction	1
Summary	2
1. PRICING OF SPECIAL ACCESS SERVICES IN MSAs SUBJECT TO PHASE II PRICING FLEXIBILITY	4
RBOC comments deflect attention away from compelling price comparison data included in AT&T's Petition.	4
2. FACILITIES-BASED COMPETITION IS STILL EXTREMELY LIMITED, EVEN IN PHASE II PRICING FLEXIBILITY MSAs.	15
Competitively-provided special access facilities are only available at an extremely small number of commercial buildings, forcing IXC's to acquire the vast majority of these services from the ILEC.	15
BellSouth's Eastern Management Group "study" rests entirely upon unsupported and patently false assumptions and assertions of "fact".	19
Verizon's <i>Competition for Special Access Services</i> report provides a false and entirely misleading assessment of the actual state of competition for special access services.	24
Verizon's Report Generally Fails to Distinguish Between Bubble Assertions by CLECs and Current, Actual Special Access Competitive Conditions.	25
Verizon Overestimates CLEC Revenues and Market Share.	29
Verizon Fails to Show that CLECs Can Economically Connect to More Than a Small Percentage of Buildings.	34
The Majority of Fiber Route Miles Operated by CLECs Are Long-Haul, Not Local.	38
Wholesale Fiber Providers and Utility Competitors Are Not a Reliable Source of Supply.	40
The Evidence Shows that ILECs Have Undermined Downstream Service Competition.	43

3. ARMIS RESULTS PROVIDE A VALID DEMONSTRATION OF SPECIAL ACCESS RATES OF RETURN THAT ARE EXCESSIVE BY ANY REASONABLE STANDARD	46
ARMIS data provides a <i>conservative</i> estimate of RBOC rates of return on Special Access Services, and confirms that these are clearly excessive by any reasonable standard.	46
Performance data reported under ARMIS shows continuing problems in special access service quality.	58

Tables

1 Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to "Increase the Differential" between Zone prices	6
2 Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to Bring the Prices in Verizon North and Verizon South Territories "More in Line"	7
3 The extraordinary increases in Phase II prices for Secondary Premises DS3 Channel Terminations in Verizon South Territory are not explained by any of the justifications offered by Verizon	9
4 Verizon has limited most of the increases in its Phase II Tariffs to Channel Terminations, leaving the prices for Transport at Price Cap Levels	10
5 Derivation of Credit Percentages from Contract Tariff Option 1 in Verizon Access Tariffs FCC 1, FCC 11 and FCC 14	12
6 BellSouth MSAs in which Full Service (Phase II) Relief has been granted that are excluded from BellSouth Contract Tariffs	14
7 Competitive Alternatives to ILEC Special Access are Minimally Available Even in MSAs with Phase II Pricing Flexibility	17
8 Competitive Alternatives to ILEC Special Access are Minimally Available Even in MSAs with the Largest CLEC Presence	18
9 Recast of EMG Table 3: Probability of CLEC availability for wholesale SA to IXC (based on percentage of AT&T customer locations at which AT&T-owned facilities are available)	22
10 Recast of EMG Table 3: Probability of CLEC availability for wholesale SA to IXC (based on percentage of all commercial buildings served by the wire center at which facilities owned by any single CLEC are available)	22
11 Major Competitive Providers of Special Access	28

Reply Declaration of Lee L. Selwyn
RM No. 10593
January 23, 2003

12	Estimated Interstate Special Access Costs and Revenues by RBOC (Including GTE) Using Kahn/Taylor DSL Revenue Assumptions	49
13	Estimated Special Access Costs and Revenues by RBOC (Including GTE)	51
14	Interstate Special Access Costs and Revenues - RBOC Totals (Including GTE)	57

Attachments

- 1 Statement of Qualifications
- 2 Installation and Repair Intervals (Interexchange Access) - Annual

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

AT&T Corp

Petition for Rulemaking to Reform
Regulation of Incumbent Local
Exchange Carrier Rates for Interstate
Special Access Services

RM No. 10593

REPLY DECLARATION OF LEE L. SELWYN

1 Introduction

2

3 Lee L. Selwyn, of lawful age, declares and says as follows:

4

5 I. My name is Lee L. Selwyn; I am President of Economics and Technology, Inc. ("ETI"),
6 Two Center Plaza, Suite 400, Boston, Massachusetts 02108. ETI is a research and consulting
7 firm specializing in telecommunications and public utility regulation and public policy. I have
8 participated in proceedings before the Federal Communications Commission ("FCC" or
9 "Commission") dating back to 1967 and have appeared as an expert witness in hundreds of state
10 proceedings before more than forty state public utility commissions. My Statement of Qualifica-
11 tions is annexed hereto as Attachment 1 and is made a part hereof.

12

13 2. I have been asked by AT&T to review and analyze the various factual claims advanced
14 by the RBOCs in support of their contention that reinstatement of price regulation for special

access services is not required. Specifically, the RROCs have challenged evidence presented by AT&T in support of its *Petition* that special access prices in MSAs subject to Phase II pricing flexibility have increased relative to special access prices that remain subject to price cap regulation, that rates of return on special access services have risen to patently excessive levels, and that competition for special access services in areas subject to Phase II pricing flexibility is not sufficient to constrain RBOC exercise of market power with respect to these services. As I show in this declaration, these RROC contentions are without merit and in no sense refute or otherwise undermine the factual basis for AT&T's *Petition*.

Summary

3. As revealed in the documentation supporting AT&T's initial petition, ample evidence exists that prices for special access services have increased in areas in which the RBOCs have been granted full Phase II pricing flexibility. In their comments regarding AT&T's evidence, the RBOCs launched a multi-faceted attack that surprisingly left untouched the most compelling piece of AT&T's evidence, its comparison of the prices for special access services tariffed in areas in which pricing flexibility has been granted to the prices that remain in effect in price caps regulated areas. In the material below, I provide further evidence of special access price increases through examination of the RBOCs' tariffs, and demonstrate that Verizon's defense of its price increases does not explain the increases that have actually occurred. I also provide evidence to refute the RBOCs' claim that CLECs have deployed or are in a financial position to deploy their own facilities to serve a substantial portion of the buildings occupied by special access customers. I establish, to the contrary, that competitively provided special access facilities are only available at an extremely small number of commercial buildings, compelling IXCs to acquire the vast majority of these services from the ILEC. Even in the most competitive MSA in the CIS, New York, where AT&T provides service at 3,613 different buildings, no AT&T or other CLEC facilities are available at 89.9% of building locations. Finally, I demonstrate that

1 the RBOCs' have produced very weak evidence in their attempts to discredit AT&T's analysis of
2 special access rates of return based on data reported to the Commission under **ARMIS** and show
3 that, in fact, ARMIS data provides a *conservative* estimate of RBOC rates of return on Special
4 Access Services.
5

1 I. PRICING OF **SPECIAL ACCESS** SERVICES IN MSAs SUBJECT TO PHASE II
2 PRICING FLEXIBILITY
3

4 **RBOC** comments **deflect** attention away from **compelling** price comparison data included
5 in **AT&T's** Petition.
6

7 4. The basic premise upon which the **FCC** relied in establishing guidelines for Phase II
8 pricing flexibility in CC Docket 96-262 was that if the required level of collocation of CLECs in
9 ILEC central offices had been established, there would at that time be a sufficient level of com-
10 petition in those markets to constrain ILEC market power and thereby obviate the need for con-
11 tinued price regulation of special access services.¹ On that basis, one would *expect* that where
12 the conditions for Phase II pricing flexibility had been satisfied **and** that pricing flexibility had
13 been implemented, special access prices in those areas would have actually decreased by a
14 greater relative amount than in those (putatively less competitive) areas still subject to price cap
15 regulation. Indeed, in their Reply Declaration, AT&T Declarants Ordovery and Willig note
16 specifically that the purported "need" to drop prices in response to competition was specifically
17 advanced by the RBOCs as a basis for the pricing flexibility that they had sought.² That aside,
18 with its *Petition* AT&T has provided detailed evidence demonstrating that not only have special
19 access prices not decreased by a greater relative amount in MSAs subject to Phase II pricing
20 flexibility than in areas that remain subject to price regulation, but that in fact under "pricing
21 flexibility" the RBOCs have actually *increased* special access rates where permitted to do so.
22

23 5. While the RBOCs and their experts have gone to great lengths in their attempts to
24 discredit the competition and rate of return (ROR) analyses proffered in support of AT&T's
25 *Petition*, they have said little in regard to the *prima facie* evidence of increasing prices — the

1. *Pricing Flexibility* Order, 14 **FCC** Rcd. 14221 (1999).

2. Ordovery/Willig Reply Decl., at para. 33.

1 comparison of price levels for price cap regulated services versus those for services where Phase
2 II pricing flexibility has been granted.'

3
4 6. Verizon's is the only *Comment* that attempts to address AT&T's evidence that ROC
5 special access prices have *increased* in those MSAs in which Phase II pricing flexibility has been
6 allowed. Other **RBOC** comments either ignore AT&T's pricing data entirely, or mention it only
7 in passing.⁴ In Footnote 58 of its filing, Verizon claims that the changes in its special access
8 prices represent a mixture of increases and decreases. While it is within the realm of possibility
9 that prices for some elements of Verizon special access service in Verizon's Phase II areas did
10 decline, our review of the tariffs failed to reveal any such instance. Apparently, the "mixture" of
11 increases and decreases to which Verizon was referring in its footnote 58 consists of *increases* in
12 those areas in which pricing flexibility has been granted and *decreases* in the remaining areas
13 where special access rates remain subject to price cap regulation.

14
15 7. Specifically, Verizon claims that its price changes are part of an attempt to "expand the
16 differential between zones 1, 2 and 3."⁵ Analysis of Verizon's pricing data, however, proves
17 this defense of its price changes to be untrue. As the table below demonstrates, Verizon has
18 applied straight, across-the-board increases to the pricing flexibility price ranges for all three
19 zones, such that the relative "differential between zones 1, 2 and 3" has actually remained
20 *unchanged* although the rate *levels* have risen. The sample data in the table below are based
21 upon the pricing for DS-3 single channels at an "initial" premises at month-to-month rates.

3. See Declaration of Joseph M. Stith, AT&T Petition

4. See, e.g., the mention of the pricing evidence in Bell South's comments only in reference to a criticism of AT&T's ARMIS based analysis. BellSouth Comments at footnote 7.

5. Verizon Comments, at fn. 58

- 1 Although limited to a single category of channel terminal prices, the results are consistent **with**
- 2 the changes made to Verizon's other **special** access rate elements as **well**,

Table 1					
Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to "Increase the Differential" between Zone prices					
Company Name	State	Zone/Band	Standard Pricing "Initial Premises" DS3 Chan Term*	Phase II Pricing Flexibility "Initial Premises" DS3 Chan Term*	% by which Phase II prices have been increased over Price Cap Levels
Verizon FCC Tariff No. 1	DC, DE, MD, NJ, PA, VA, WV	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6	\$2,667.50 \$2,800.88 \$2,934.25	\$3,025.00 \$3,176.25 \$3,327.50	13% 13% 13%
		Differential between Zone 1/ Band 4 and Zone 3/Band 6	10%	10%	
Verizon FCC Tariff No. 11	MA	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6	\$2,310.00 \$2,425.50 \$2,541.00	\$2,541.00 \$2,668.05 \$2,795.10	10% 10% 10%
		Differential between Zone 1/ Band 4 and Zone 3/Band 6	10%	10%	
Verizon FCC Tariff No. 11	NY, CT	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6	\$2,310.00 \$2,425.50 \$2,541.00	\$2,541.00 \$2,668.05 \$2,795.10	10% 10% 10%
		Differential between Zone 1/ Band 4 and Zone 3/Band 6	10%	10%	
Verizon FCC Tariff No. 11	ME, NH, RI, VT	Zone 1/Band 4 Zone 2/Band 5 Zone 3/Band 6	\$2,541.00 \$2,541.00 \$2,541.00	\$2,795.10 \$2,795.10 \$2,795.10	10% 10% 10%
		Differential between Zone 1/ Band 4 and Zone 3/Band 6	0%	0%	
Note *: This is the monthly rate for a primary location with a single DS3 CT.					
Source: The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9 (A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies access Service tariff F.C.C. No. 1, section 7.5.9(B)(1)(d), effective January 5, 2002.					

- 3 8 Verizon goes on to suggest that another reason for its price changes is an attempt to bring
- 4 the rates between Verizon North (the former NYNEX states) and Verizon South (the former Bell

- 1 Atlantic states) more in line.' In point of fact, however, as the data on the table below demon-
2 strates, the gap between the prices charged by Verizon South and Verizon North is greater in
3 areas in which pricing flexibility has been granted than it is elsewhere.

Table 2				
Contrary to Its Claims, the Changes that Verizon has made to its Special Access Tariffs Do Nothing to Bring the Prices in Verizon North and Verizon South Territories "More in Line"				
Company Name	State	Zone/Band	Standard Pricing "Initial Premises" DS3 Chan Term *	Phase II Pricing Flexibility "Initial Premises" DS3 Chan Term *
Verizon ICC Tariff No. 1	DC, DE, MD, NJ, PA, VA, WV	Zone 1/Band 4	\$2,667.50	\$3,025.00
		Zone 2/Band 5	\$2,800.88	\$3,176.25
		Zone 3/Band 6	\$2,934.25	\$3,327.50
Verizon ICC Tariff No. 11	MA, NY, CT	Zone 1/Band 4	\$2,310.00	\$2,541.00
		Zone 2/Band 5	\$2,425.50	\$2,668.05
		Zone 3/Band 6	\$2,541.00	\$2,795.10
Verizon ICC Tariff No. 11	ME, NH, RI, VT	Zone 1/Band 4	\$2,541.00	\$2,795.10
		Zone 2/Band 5	\$2,541.00	\$2,795.10
		Zone 3/Band 6	\$2,541.00	\$2,795.10
Amount by which Verizon South rate exceeds Verizon North (MA, NY, CT)				
		All Zones	15%	19%
Amount by which Verizon South rate exceeds Verizon North (ME, NH, RI, VT)				
		Zone 1/Band 4	10%	14%
		Zone 2/Band 5	10%	14%
		Zone 3/Band 6	15%	19%

1 9. Particularly noteworthy in Verizon's case are the phenomenal increases in ...c price for
2 Verizon South DS3 channel terminations at "secondary premises," an entire class of customer
3 locations (not limited to specific geographic areas within an **MSA**) that is less likely to have
4 competitive options available to it. While the variance between prices for a "primary premises"
5 DS-3 channel termination in the Verizon South FCC Tariff No. 1 offered at standard price caps
6 regulated prices and that available in Phase II **MSAs** is 13% (between \$350 and \$400 more in
7 Phase II areas depending upon density zone), the variance for "secondary premises" channel
8 terminations is 71% (ranging between \$1,210 and \$1,331 more in Phase II areas). Verizon's gap
9 in the price for a DS-3 channel termination located in density Zone 1 in the most competitive
10 **MSAs** in Verizon South territory (encompassing the downtown areas of places like Pittsburgh,
11 **PA** and Richmond, VA) from the level of \$1,700.96 found in the price caps regulated areas to
12 \$2,711.37 — a gap of more than 70% — does not begin to be justified by any of the explanations
13 being advanced in Verizon's comments.

7. While the definition of a secondary premises in Verizon's tariff (at Verizon FCC No. 1, Section 7.4.1.A.1) is rather unhelpful, a full reading of the rate regulations reveals rather clearly that the "primary premises" is an **IXC POP**, and the "secondary premises" is a end user customer premises.

Company Name	State	Zone/Band	Standard Pricing "Secondary Premises" DS3*	Phase II Pricing Flexibility "Secondary Premises" DS3*	% by which Phase II prices have been increased over Price cap Level
Verizon FCC Tariff No. 1	DC, DE, MD, NJ, PA VA WV	Zone 1/Band 4	\$1,700.96	\$2,911.37	71%
		Zone 2/Band 5	\$1,786.01	\$3,056.94	71%
		Zone 3/Band 6	\$1,871.06	\$3,202.51	71%
		Differential between Zone 1/ Band 4 and Zone 3/Band 6	10%	10%	
Verizon FCC Tariff No. 11	MA, NY, CT	Zone 1/Band 4	\$1,700.96	\$1,871.06	10%
		Zone 2/Band 5	\$1,786.01	\$1,964.61	10%
		Zone 3/Band 6	\$1,871.06	\$2,058.17	10%
		Differential between Zone 1/ Band 4 and Zone 3/Band 6	10%	10%	

1 10. Verizon has increased its prices for channel terminations in Phase II pricing areas
 2 virtually across-the-board, while keeping the prices for the transport component constant. None
 3 of the justifications advanced by Verizon at footnote 58 of its Comments — viz.: increasing the
 4 differentials among Zones 1, 2 and 3, rationalization of Verizon North and Verizon South rates,
 5 and the claim that the channel termination rate increases applied only to its month-to-month rates
 6 and not to its Contract Tariff rates — adequately account for this change. As shown in Table 4
 7 below, using month-to-month prices for a single TIS-3 as an example once again, the portion of
 8 the total price for a two-ended access circuit with 10 miles of associated interoffice transport
 9 increased by 36%, while the transport component itself remained unchanged. For DS-1 circuits,
 10 Verizon has raised channel terminations in some Phase II areas by up to 24%, while increasing

- 1 transport by only 4%.⁸ The price of a full DS-I circuit with 10 miles of transport has increased
2 almost 11%, with channel termination accounting for over 46% of the circuit price.⁹

Table 4			
Verizon has limited most of the increases in its Phase II Tariffs to Channel Terminations, leaving the prices for Transport Price Caps levels			
	Standard Pricing	Phase II Pricing	% by Which Phase II Exceeds Standard Pricing
<i>VZ-South - Zone 1/Band 4</i>			
Initial Premises CT	\$2,667.50	\$3,025.00	13%
Secondary Premises CT	\$1,700.95	\$2,911.37	71%
Transport Fixed Charge	\$825.00	\$825.00	0%
Transport Mileage: 10 miles	\$1,550.30	\$1,550.30	0%
Total Circuit Price	\$6,743.76	\$8,311.67	23%
CT Portion of Circuit Price	\$4,368.46	\$5,936.37	36%
<i>VZ-North - Zone 3/Band 6</i>			
Initial Premises CT	\$2,541.00	\$2,795.10	10%
Secondary Premises CT	\$1,871.06	\$2,058.17	10%
Transport Fixed Charge	\$825.00	\$825.00	0%
Transport Mileage: 10 miles	\$1,550.30	\$1,550.30	0%
Total Circuit Price	\$6,787.36	\$7,228.57	7%
CT Portion of Circuit Price	\$4,412.06	\$4,853.27	10%
Source: The Verizon Telephone Companies Access Service Tariff F.C.C. No. 11, section 31.7.9(A) (1) C effective April 28, 2001, Section 30.7.9(A)(1)C, effective November 8, 2002, The Verizon Telephone Companies Access Service Tariff F.C.C. No. 1, Section 7.5.9(B)(1)(d), effective January 5, 2002.			

8. The Verizon Telephone Companies Access Service Tariff, F.C.C. No. 11, sections 31.7.9 (A) (1)(a) effective July 2, 2002 and 30.7.9 (A) (1) (a), effective January 5, 2002; The Verizon Telephone Companies Access Service Tariff, F.C.C. No. 11, sections 31.7.9 (B) (2) and 30.7.9 (B) (2), effective January 5, 2002.

9. DS-I Channel Termination in Massachusetts Zone 2/Band 5 increased from a standard rate of \$228.25 to \$280.55. Transport charges increased from \$53.00 to \$55.00, with a per mile transport charge of \$26.30 standard rate, and \$27.37 Phase II rate.

11. Verizon also indicates that an analysis of prices offered in areas in which pricing flexibility has been granted that is based upon the non-contract based prices is flawed because Verizon has filed Contract Tariffs and those Contract Tariff based price levels are the pertinent prices." While I dispute Verizon's contention that any pricing analysis must be based upon Contract Tariff based prices, I nonetheless evaluated whether the existence of the Contract Tariffs affected the conclusions yielded by AT&T's initial analysis. The answer is that it does not.

12. As of the date that this declaration was being prepared, more than eighteen months after it had been granted pricing flexibility, Verizon had filed only two Contract Tariffs. And although pricing flexibility has been granted in most of the largest of Verizon's markets, the magnitude of special access revenues covered by those two Contract Tariffs represent less than 10% of Verizon's Special Access revenues as reported for calendar year 2001, suggesting that they likely represent an even smaller portion of Special Access revenues today."

13. Moreover, the level of discount being offered through each of Verizon's Contract Tariffs (structured as a discount off of the Phase II general price levels) does not necessarily even compensate for the increases found in the pricing flexibility tariffs. In other words, even with the Contract Tariff discounts, the prices for many pricing flexibility services are still above the levels available for the same services in price cap regulated areas. As the table below illustrates, the application of "incentives" available through Verizon's Contract Tariff Option 1. CT Option 1 requires commitment to deliver \$301-million in special access billing during the first

10. Verizon Comments, at fn. 58.

11. Based upon the overall volume threshold and minimum traffic requirements found in the two Verizon Contract Tariffs, the aggregate commitment to service is in the range of approximately \$400-million per year for both contracts combined across all regions. See, Verizon FCC No. 1, Section 21, Verizon FCC No. 11, Section 32, and Verizon FCC No. 14, Section 21. Verizon's reported special access revenues per ARMIS for 2001 were in excess of \$4.7-billion.

1 year of the contract (escalating to \$386-million by the third year), and offers "incentives" for
2 delivery of Product Suite traffic as well. The relevant Product Suite in CT 1 is DS3 Service, and
3 for year one, the customer must deliver a minimum of \$132-million in DS3 billing, with the dis-
4 counts maxing out at \$137-million in billing. Using the examples in the tariff, the total incen-
5 tive discount available for non-DS3 services (based upon annual billing of \$340-million) is
6 2.7%. The incentive discount for the Product Suite, assuming delivery of the \$135.5-million in
7 DS3 billing used in the tariff example, works out to 5.4%. Combined, the "Product Suite" and
8 Annual incentives available for DS3 services is equal to 8.1%. Compare this to the 10% and
9 13% increases in the prices for DS3 month to month channel terminals, or the 71% increase in
10 the secondary channel termination rate in the Verizon South Phase II MSAs, and the discount
11 offered through the Contract Tariff is less than overwhelming.

Table 5				
Derivation of Credit Percentages from Contract Tariff Option 1 in Verizon Access Tariffs FCC 1, FCC 11 and FCC 14				
<i>Annual Incentive Component</i>				
			Year 1 credits	
a)	Total Revenues in Tariff example	\$	340,000,000	
b)	Fixed Incentive Year 1	\$	3,800,000	\$ 3,800,000
c)	Tier 1 Discount (applies on \$301 to \$325 million)		10%	\$ 2,400,000
d)	Tier 2 Discount (applies on \$s above \$325-million)		20%	\$ 3,000,000
e)	Total Annual Incentive Credit			\$ 9,200,000
f)	Annual Incentive Credit as % of Billing		2.7%	
<i>Product Suite Incentive</i>				
	Total Revenues in Tariff example	\$	135,500,000	
	Level 6 (product suite billing >\$137-mil)		100% of annual incentive	
	Level 5 (product suite billing between \$136- and 137-mil)		90% of annual incentive	
	Level 4 (product suite billing between \$135- and 136-mil)		80% of annual incentive	\$ 7,360,000
	Total Product Suite Incentive Credit			\$ 7,360,000
	Product Suite Incentive Credit as % of Product Suite Billing		5.4%	
	Total Incentive % on DS3 Product Suite		8.1%	
	Total Incentive % on other Special Access Products		2.7%	
Source: Verizon FCC # 1, Section 21, pages 21-12 - 21-14, Verizon FCC #11, Section 32, pages 32-11 - 32-13, and Verizon FCC # 14, Section 21, pages 21-11 - 21-13.				

14. Despite their professed interest in engaging in Contract Tariffs as a specific response to the competition that they purport to confront, the other RBOCs also entered into only a handful of Contract Tariffs during 2002. Contract Tariffs in the SBC companies (Southwestern Bell, Pacific Bell, Ameritech and SNET combined) at first glance appear to be somewhat more prevalent. Across the entire territory, ten different Contract Tariffs have been filed, nine of which were filed in 2002. However, of those nine 2002 Contract Tariffs, six are essentially term plans for multiplexed DS-0 to DS-1 interoffice transport, and offer no pricing concessions for anything else.¹² Similarly, BellSouth has only tariffed ten custom contracts, half of which were executed during 2002.¹³ As of the date of this declaration, Qwest had not executed any Special Access Contract Tariffs.¹⁴

15. Many of the Contract Tariffs that have been filed are restricted to limited geographic areas. Thus, despite the existence of Contract Tariffs, there are **MSAs** where Phase II pricing flexibility has been granted but where no services are currently being provided or offered pursuant to a Contract Tariff. As an example, a review of the ten Contract Tariffs filed by BellSouth reveals that although full Phase II pricing flexibility has been granted in the Columbia, SC, Evansville, KY, Owensboro, KY and Lafayette, LA MSAs, not one of BellSouth's Contract Tariffs offers contract based pricing in *those* **MSAs**. One of the other contracts applies in only eight of BellSouth's thirty Phase II pricing flexibility MSAs, while another is limited to eleven, and a third to eighteen out of the full thirty.

12. SWBT Tariff FCC No. 73 - Section 41, Ameritech Tariff FCC No. 2, Section 22 and Pacific Bell Tariff FCC No. 1, Section 33.

13. BellSouth Tariff FCC No. 1, Section 25.

14. Qwest Tariff FCC No. 1, Section 24.

Contract Tariff #	BellSouth MSAs
1	Evansville, KY. Owensboro, KY. Lafayette, LA, Columbia. SC
2	Evansville, KY, Owensboro, KY. Lafayette. LA, Columbia, SC
3	Montgomery AL, Jacksonville, FL. Pensacola. FL. West Palm Beach, FL. Savannah, GA. Evansville, KY. Louisville, KY. Owensboro, KY, Baton Rouge, LA Lafayette, LA. Lake Charles, LA. Monroe, LA, Shreveport. LA. Biloxi, MS, Jackson, MS, Chattanooga. TN. Knoxville. TN. Nashville, TN. Columbia, SC
4	Evansville, KY. Owensboro. KY, Lafayette. LA, and Columbia, SC
5	Evansville. KY. Owensboro. KY, Lafayette, LA, and Columbia, SC
6	Evansville, KY. Owensboro. KY. Lafayette. LA. Lake Charles, LA. and Columbia.:
7	Evansville, KY, Owensboro, KY, Lafayette, LA, and Columbia, SC
8	Montgomery. AL, Daytona Beach, FL, Gainesville, FL. Jacksonville, FL, Melbourne, FL, Miami, FL, Orlando, FL, West Palm Beach, FL, Atlanta, GA. Savannah, GA. Evansville, KY. Louisville, KY, Owensboro. KY. Lafayette. LA, Charlotte. NC. Greensboro, NC. Raleigh-Durham, NC. Wilmington, NC. Chattanooga. TN, Knoxville, TN, Memphis, TN, Columbia, SC
9	Pensacola, FL. Savannah, GA, Evansville, KY. Owensboro, KY, Baton Rouge, LA, Lafayette. LA, Lake Charles. LA, Monroe, LA, Shreveport. LA, Jackson, MS, Columbia. SC
10	Evansville, KY. Owensboro, KY. Lafayette, LA, Columbia. SC

2. FACILITIES-BASED COMPETITION IS STILL EXTREMELY LIMITED, EVEN IN
PHASE II PRICING FLEXIBILITY MSAs.

Competitively provided special access facilities are only available at an extremely small number of commercial buildings, forcing IXC's to acquire the vast majority of these services from the ILEC.

16. Special access services consist of three principal elements — the loop facility connecting the customer's premises with the serving wire center ("Channel Termination"), Interoffice Transport links interconnecting two or more wire centers, and entrance facilities. While the Commission's Phase II Pricing Flexibility requirements are driven primarily by the presence of CLEC/CAP collocation arrangements in ILEC central offices,¹⁵ in practice such collocation may possibly affect the ability of a CLEC/CAP to compete with the ILEC for Interoffice Transport, but *not* its ability to provide the special access link to the customer's premises. Indeed, RBOCs fail to provide any evidence of competitive facilities being used to displace either interoffice transport in the RBOC network or channel terminations to end user premises. Accordingly, even if the presence of multiple collocation arrangements were by itself sufficient to establish the presence of effective competition for *interoffice transport* — which in many cases it is not — the presence of such collocation does not facilitate or support competition with respect to "last mile" channel terminations to individual customer premises, the market for which with few exceptions remains the near-exclusive domain of the incumbent LECs.

17. In order to compete without the use of any ILEC special access service, a CLEC/CAP must either deploy its own facilities between the customer's premises and the CLEC's central office, or acquire them from another CLEC/CAP, if available. Absent that, the fact that the CLEC/CAP may have a collocation presence in the ILEC wire center serving the customer will not enable it to bypass ILEC special access channel termination service. If the CLEC wants to

15. *Pricing Flexibility Order*, 14 FCC Rcd 14221, 14261-14262.

1 offer competitive transport facilities to customers in buildings that are not served by its own or
2 by another CLEC's subscriber facilities, the *only* means by which it can interconnect its compe-
3 titive transport facilities with its customer is via ILEC-provided special access.

4
5 18. ILECs own subscriber access line facilities connecting some 3- to 4-million commercial
6 buildings nationwide.¹⁶ AT&T currently provides service at approximately 186,000 commercial
7 buildings.¹⁷ Of these, AT&T owns facilities to only about 6,700 buildings, and obtains facilities
X from other CLECs at approximately 3,300 additional locations.¹⁸ Thus, competitive alternatives
9 to ILEC special access service are available at only about 10,000 locations, representing roughly
10 5.7% of the approximately 186,000 commercial buildings at which AT&T currently provides
11 service, and at less than 0.4% of the 3- to 4-million commercial buildings nationwide.

12
13 19. The availability of competitive alternatives to ILEC special access in MSAs subject to
14 Phase II pricing flexibility is not appreciably greater. AT&T currently serves 38,477 buildings

16. This does not necessarily mean that the potential market for special access-like facilities consists of all commercial buildings. On the other hand, it clearly consists of more buildings than merely those that are currently receiving service.

17. LNS Building Data Warehouse, <http://liscot.als.att.com/lscot/>, accessed January 22, 2003 and LNS Building Inventory, AT&T Proprietary Database, accessed January 10, 2003.

18. *Id.*

- 1 in the Full Coverage Phase II MSAs,¹⁹ and owns or has access to other CLEC-owned facilities in
 2 only **about** 2,375 of these²⁰ (see Table below), about 6% overall
 3

Table 7 Competitive Alternatives to ILEC Special Access are Minnirnally Available Even in MSAs with Phase II Pricing Flexibility				
Type of Pricing Flexibility	TOTAL AT&T - served buildings	AT&T	Other CLECs	ILECs
Full Coverage Under Phase II	38,477	1,661 4.32%	714 1.86%	36,102 93.83%
Limited Coverage Under Phase II	94,202	4176 4.43%	1,893 2.01%	88,133 93.56%
No pricing flexibility	53,456	890 1.66%	682 1.28%	51,884 97.06%
TOTALS	186,135	6,727 3.61%	3,289 1.77%	176,119 94.62%
Sources: See footnote 19.				

19. Southwestern Bell Telephone Company, Tariff FCC No. 73, Section 39.2(A) and (B), 1st Revised Page 39-3, Effective: June 18, 2002; Qwest Corporation, Tariff FCC No. 1, Section 23, Original Page 23-0 - Original Page 23-28, Effective: June 18, 2002; The Verizon Telephone Companies, Tariff FCC No. 1, Section 14.7, Original Page 14-44 - Original Page 14-61, Effective: July 3, 2001; The Verizon Telephone Companies, Tariff FCC No. 11, Section 15.3, Original Page 15-19 - Original Page 15-34, Effective: July 3, 2001; Verizon Telephone Companies, Tariff FCC No. 14, Section 19.1, Original Page 19-1 - 3rd Revised Page 19-37, Effective: May 2, 2001 through June 1, 2002; The Southern New England Telephone Company, Tariff FCC NO. 39, Section 24.2(A) and (B), Original Page 24-2, Effective: June 18, 2002; Ameritech Operating Companies, Tariff FCC No. 2, Section 21.2 (A) and (B), 1st Revised Page 689, Effective June 18, 2002; Pacific Bell Telephone Company, Tariff FCC No. 1, Section 31.2(A) and (B), 3rd Revised Page 3 1-3, Effective: July 2, 2002.

20. *Id.*

20. Even in MSAs with the largest CLEC presence, CLECs inust rely upon ILEC-provided special access services for the majority of their customer connections. Consider, for example, the following statistics for the New York, Boston, Chicago and Los Angeles areas:

Table 8			
Competitive Alternatives to ILEC Special Access are Minimally Available Even In Areas with the Largest CLEC Presence			
MSA	AT&T Share	Other CLEC Share	ILEC Special Share
New York	12.6%	1.5%	85.9%
Boston	11.8%	1.7%	86.5%
Chicago	4.6%	1.4%	94.0%
Los Angeles	3.5%	1.1%	95.4%

Even in the most competitive area in the US, New York, no AT&T or other CLEC facilities are available at 85.9% of those locations. A similar pattern is evident in each of the other three large markets. Moreover, it would be incorrect to interpret these aggregate MSA-wide figures as suggesting that the distribution of AT&T- and CLEC-owned facilities is anything close to homogeneous within each of these MSAs. The principal location of AT&T- or CLEC-owned facilities is generally limited to the central business district and to a few other isolated locations. It is also noteworthy that there are large areas in which there are no AT&T-connected customer locations at all; in these locations, the ILEC remains the sole support of local telecommunications services. The extremely limited availability and non-homogeneous distribution of non-ILEC facilities, even in MSAs with the greatest competitive presence, underscores the conclusion that the MSA is simply too large an area within which to assess the ability and opportunity for CLECs to compete for special access services. And except in those specific locations where CLEC-provided special access facilities are in place, the ILEC maintains its unchallenged monopoly and market power.

21. Both BellSouth and Verizon have attempted to misdirect the Commission away from this indisputable reality by introducing theoretical “studies” and other evidence that purports to show a substantially greater amount of facilities-based CLEC activity than is actually present. These RBOC “studies” and their portrayals of an intensely competitive facilities-based market are so fatally flawed that they must be dismissed as entirely meritless.

BellSouth’s Eastern Management Group “study” rests entirely upon unsupported and patently false **assumptions** and assertions of “fact”

22. BellSouth has attempted to dismiss these empirical realities by offering an entirely theoretical “study” penned by the Eastern Management Group (“EMG”) that purports to “derive the likelihood that Special-Access type facilities will be available in BellSouth’s territory.”²¹ The EMG paper appears to be premised upon the notion that “the likelihood of the presence of such [collocated CLEC] facilities in a wire center indicates the availability of alternatives to BellSouth Special Access.”²² I disagree. What “indicates the availability of alternatives to BellSouth Special Access” is the *actual presence* of alternative facilities in a wire center, not some theoretical calculation of “likelihood” that is itself premised upon entirely unsupported assumptions that are simply wrong as a matter of fact.

23. Not surprisingly, of course, EMG’s calculation of theoretical “likelihood” is driven entirely by an *assumption* of actual presence of CLEC-owned facilities in each wire center. EMG contends that, on average, ***each collocated CLEC individually owns special access type facilities connected to 30.9% of the buildings served by that wire center:***

The probability of an IXC being able to purchase special access from a collocated CLEC is simply (1 — probability that no collocated CLEC is willing to

21. Comments of BellSouth, Exhibit 2 (“EMG Report”), at 7.

22. *Id.*, at 7.